

46 Am. Jur. 2d Judges § 42

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Judges

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VI. Privileges, Exemptions, and Disabilities

A. In General

§ 42. Privileges and exemptions of judges, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  20, 21

A.L.R. Library

[Disciplinary action against judge for engaging in ex parte communication with attorney, party, or witness, 82 A.L.R.4th 567](#)

Because of the nature of the office, the judge is granted certain special privileges and exemptions; generally, a judge is exempt from liability for judicial acts,¹ and under certain circumstances a judge is exempt from arrest² and from the service of civil process.³ In some jurisdictions, a judge may be disbarred for unauthorized practice of law, although there is authority to the contrary.⁴

A judge, under certain circumstances, may be disciplined for conduct unbecoming a member of the judiciary; such conduct may be proved by evidence of specific major incidents or by evidence of an accumulation of small, ostensibly innocuous incidents, which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary.⁵

The peculiar nature of judicial office imposes certain restrictions and limitations on a judge with respect to the extent to which the judge may engage in the ordinary activities and associations of citizens; a judge should refrain from activities and associations that would tend to impair the judge's independence of judgment or render the judge subject to improper influence in the performance of official duties.⁶ A canon of a state code of judicial conduct prohibiting judges from serving on boards of directors of banks and other financial institutions does not unconstitutionally infringe upon judges' First Amendment freedom of association and is not so arbitrary and unreasonable as to violate substantive and procedural due process and equal protection

guarantees.⁷ For instance, a judicial ethics rule prohibited a family court judge from serving on an advisory board of a financial institution; the judge's position on the bank's advisory board unquestionably served to lend the prestige of the judicial office to a private financial institution, the bank would likely have some interest in the outcome of family court proceedings by virtue of being a repository of funds or a holder of debt of family court litigants, and any arbitrary distinction between circuit judges exercising general jurisdiction and circuit judges exercising family court jurisdiction would have resulted in an impermissible and arbitrary division.⁸ A judge may not be a purchaser at a sale in connection with which the judge, or the court over which the judge presides, has some duty to perform.⁹ However, a judge may serve as a member of a state bar without violating a statute prohibiting a judge from belonging to an "organization engaged in political activity."¹⁰

Speech about public issues and the qualifications of candidates for elected office commands the highest level of First Amendment protection; however, judicial candidates may be treated differently than political candidates for purposes of curtailing improper speech, as judges are not politicians, even when they come to the bench by way of the ballot, and a state's decision to elect its judiciary does not compel it to treat judicial candidates like a campaigner for political office.¹¹ Because the First Amendment reviles restrictions on core political speech, restrictions on the speech of judicial candidates in judicial elections are subject to the strict scrutiny standard; under the strict scrutiny standard, a state may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest.¹² Under the First Amendment and judicial canons requiring that judges be elected from their respective districts or circuits on a nonpartisan basis, judicial candidates may "affiliate," that is "portray" themselves as members of a political party without restriction; what they may not do under the judicial canons is portray themselves, either directly or by implication, as the official nominee of a political party.¹³ When an incumbent judge uses the word "reelect" as a campaign stratagem to persuade the public that the judge acquired the office by the popular vote of the people rather than as the appointee of a governor, its use is calculated to mislead and deceive the voters, in violation of a judicial canon stating that a judge or judicial candidate may not knowingly, or with reckless disregard for the truth, misrepresent any candidate's identity, qualifications, present position, or make any other false or misleading statements.¹⁴ Similarly, a judicial candidate's statement in a campaign flyer, that the President of the United States and an opposing judicial candidate had a "party" at the White House in support of the President's legislative agenda while a state county lost hundreds of jobs, was not objectively or substantially true, and thus the code of judicial conduct rule and rule of professional conduct prohibiting knowingly making false statements during a judicial campaign or about judicial candidates did not violate the First Amendment free-speech protections as applied to the candidate; the substance of the communication, taken as a whole, was patently false, as the truth was that the opposing candidate merely attended a federally required meeting and seminar that took place on the White House grounds, and the flyer conveyed that the opposing candidate had socialized with the President.¹⁵

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Footnotes

- 1 §§ 61 to 79.
- 2 Am. Jur. 2d, Arrest § 111.
- 3 Am. Jur. 2d, Process § 16.
- 4 § 46.
- 5 In re Kinsey, 842 So. 2d 77 (Fla. 2003); In re Inquiry Concerning a Judge, James S. Byrd, No. 84-73, 460 So. 2d 377 (Fla. 1984); In re Lee, 336 So. 2d 1175 (Fla. 1976).
- 6 Estate of Sheen, 145 Misc. 2d 920, 548 N.Y.S.2d 618 (Sur. Ct. 1989); Matter of Disciplinary Proceedings Against Costello, 142 Wis. 2d 926, 419 N.W.2d 706 (1988).
- 7 Babineaux v. Judiciary Commission, 341 So. 2d 396 (La. 1976).
- 8 As to political activity of judges, generally, see § 45.
- 9 Walson v. Ethics Committee of Kentucky Judiciary, 308 S.W.3d 205 (Ky. 2010).
- 10 Am. Jur. 2d, Executions and Enforcement of Judgments § 331.
- 11 In re Greenwood, 796 P.2d 682 (Utah 1990).

- 11 [Matter of Callaghan, 238 W. Va. 495, 796 S.E.2d 604 \(2017\)](#), petition for certiorari filed (U.S. July 10, 2017).
12 [Winter v. Wolnitzek, 482 S.W.3d 768 \(Ky. 2016\)](#).
13 [Winter v. Wolnitzek, 482 S.W.3d 768 \(Ky. 2016\)](#).
14 [Winter v. Wolnitzek, 482 S.W.3d 768 \(Ky. 2016\)](#).
15 [Matter of Callaghan, 238 W. Va. 495, 796 S.E.2d 604 \(2017\)](#), petition for certiorari filed (U.S. July 10, 2017).

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